

ALAN M. WOLK
ARBITRATOR

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN

CITY OF WOOSTER

EMPLOYER

and

OHIO PATROLMAN'S BENEVOLENT ASSOCIATION

UNION

)
) NO. 95-MED-10-0916
)
) FACT FINDING
) REPORT AND
) RECOMMENDATION
)
)
)

APPEARANCES:

FOR THE UNION:

S. RANDALL WELTMAN ESQ. CLIMACO, CLIMACO, SEMINATORE, LEFKO-
WITZ & GAROFOLI CO. L.P.A.

FOR THE CITY:

RICHARD BENSON JR. ESQ. DIRECTOR OF LAW

SUBMISSION

FACT FINDING REGARDING AGREEMENT
WITH OHIO PATROLMAN'S BENEVOLENT ASSOCIATION

The undersigned was selected by the parties through the STATE EMPLOYMENT RELATIONS BOARD to serve as fact-finder pursuant to Ohio Revised Code Section 4117.14(c)(3)(a) and Ohio Administrative Code Rule 4117-9-05(F).

By agreement of the parties, hearings were held (1/25/96) WOOSTER MUNICIPAL BUILDING, Wooster, Ohio (WAYNE, County, Ohio) during which time the parties were afforded a full opportunity to present opening statements; to submit and to cross-examine evidence, as well as to offer exhibits or documents, and to argue the merits of their respective positions as to all issues orally, the submission of briefs being filed by both parties on or about 2/15/96 exchanged by the Fact Finder.

The City attached two affidavits to its post hearing brief. The Union objected. Without reading these affidavits, the Factfinder held a telephone conference with the representatives of the parties and permitted the parties to reopen the hearing, or, alternatively, to conduct a telephone testimony of both affiants, or the fact finder could simply rule on the objection. The Union's objection was later withdrawn and each party submitted supplemental written communications regarding the evidence in contention

Supplemental communications were completed by 3/22/96. The parties understood that the Fact Finder's Report would be due as of March 31, 1996.

All stipulations, all exhibits submitted, and the testimony, affidavits, objections and briefs have been duly received and given such weight as deemed appropriate by the Fact Finder.

Pre-Hearing Information [Ohio Adm Code: 4117-9-05(F)]

1. Parties

UNION:

The Ohio Patrolman's Benevolent Association. The principal representative is S. RANDALL WELTMAN, ESQ. CLIMACO, CLIMACO, SEMINATORE, LEFKOWITZ & GAROPOLI CO. L.P.A., 9th Floor - The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115 (216-621-8484).

EMPLOYER:

City of Wooster, Ohio, 538 N. Market Street, Wooster, Ohio 44691-0155; Attention: RICHARD R. BENSON, Jr. Esq. Director of Law, (phone: 1-216-263-5248) or Kathleen Gallo, Personnel Manager; the population is approximately 23,000 in slightly over 14 square miles. It is a Home Rule City under Art. XVIII Section 3 of the Ohio Constitution

2. Bargaining Unit

The bargaining unit consists of approximately 27-29 salaried Patrolmen, 3 Police Sargents and 3 Police Lieutenants

3. Certification or Recognition date

4/4/84 with a history of collective bargaining since 1970.

4. Current collective bargaining agreement, if any.

1/1/93-12/31/95

5. Description of employer and employee functions

The City is a municipal corporation organized under Article XVIII Section 3 of the Ohio Constitution ("Home Rule"), In addition to the usual municipal functions, Wooster operates a city hospital.

The employees perform a broad array of customary police services.

6. List dates of meetings

10/25/95; 11/8/95; 11/30/95

7. Statement of unresolved issues

There were 8 issues Articles at the start of the hearing. (Compensation; Salary Reduction Program; Overtime Pay; Holidays; Sick Leave (two issues); Insurance; Acting Pay.

Criteria Applied

The fact finder, in making recommendations, considers all reliable information relevant to the issues, including, but not limited to:

(1) Past collectively bargained agreements, if any, between the parties;

(2) Comparison of unresolved issues related to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(4) The lawful authority of the public employer;

(5) Any stipulations of the parties; and

(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Proceedings

This Report and Recommendations seeks to identify the contentions in dispute and to consider the focus, weight and relevancy of the

evidence, the logic of the arguments and the impact on each party. All exhibits were reviewed although only some are discussed.

Basically, the City claims an inability to pay because of financial distress over the preceding two years, and the Union claims the City has the ability to pay.

Contract Document

The most recent contract expired 12/31/95. The parties stipulated that the resolution of the contract will be retroactive as of 1/1/96.

Other Unions in the City have negotiated so called "me-too" or piggyback covenants so that the result of this proceeding will impact the firefighters and the service employees. Wages of Non Union employees are not subject to the collective bargaining process.

Positions of the parties, generally:

Comparables

UNION argument:

According to the Union, the survey it provided demonstrates the OPBA proposals are warranted. The City's comparables are based on population or county seat. Ashtabula and Chillicothe are not comparable. [Deleting these two does not significantly change the averages calculated by SERB as offered by the City].

CITY argument:

The City asks that the Fact Finder consider total compensation. A comparative table provides history that wages are up 26.91% (compounded) compared with 16.78% CPI over 5 years. The City's proposal is at or below mid-point v at or above mid-point proposed by the Union. It is noted that total compensation for top officers is \$53,670.72.

Interest and Welfare of the Public

CITY argument:

According to the City, it has a history of suffering severe financial distress over the past two years, and then failed twice in 1994 to pass an income tax increase of 1/2 percent. As a result, it adopted cost cutting retrenchment by which it: (1) froze man-

agement salaries with no annual increases; (2) eliminated some management positions; (3) consolidated some municipal offices; (4) delayed filling vacancies; (5) encouraged early retirement of 10 employees; (6) laid off 6 full-time and 2 part-time employees; (7) adopted a lean balanced budget for 1996; and (8) and adopted City Section 161 requiring a balanced budget in 1997.

Ability to Finance and Administer

UNION argument:

The City failed to prove an inability to pay, it is an unwillingness. It has a high bond rating; revenue sources are increasing including income tax (the Union discounts the negative impact of the loss of 300 Rubbermaid jobs); annual year end surpluses have permitted significant debt retirement and expanding capital expenditures; the City has budgeted \$400,00 for paramedic training but has no paramedics. The Union asserted high level Manager received raises of 3% plus 1% merit increases assertedly in lieu of 1996 increases and out of 1995 surplus.

The Police department budget provided by the City was inconsistent with the police department's budget as testified to by the police chief.

The City can take funds from the surpluses or from other general funds to satisfy police compensation.

CITY argument:

(1) ability to pay and administer

"Inability to pay" is subjective; it is the City's duty to serve its citizens via educated guess. Prudent management requires the City to plan for its financial needs and to maintain cash and capital reserves.

The City denies raises were or will be given high level employees as asserted by the Union. (See Patterson affidavit). At the end of 1995 the Mayor issued a 3% "stipend" to managers who had be given a pay cut the previous year.

Out of the 1996 budget of \$13,144,205.00, 80% is personnel.

It is argued by Management that there is no budget inconsistency of \$360,000 because the Police Chief did not include in his budget encumbrances rolled forward from previous year. [See Gard affidavit].

Capricious transfers between funds are generally prohibited, except for unexpended balances of bond funds, specific permanent improvement funds, sinking funds or special funds where the purpose of the funds are complete and terminated, [citing: 1 Gotherman & Babbit, Ohio Municipal Law Sec 12.22; see also ORC 5705.16 allowing certain petitions].

(2) Capital improvement fund

While the capital improvement fund may be a source, that fund is restricted under the Charter of the City of Wooster, [ART VI par. 6.06].

Budget appropriations are subject to Councilmanic approval on each purchase over \$10,000. The goal is to catch up inability to provide capital needs in prior years. It is asserted that the capital budget fund has been virtually non existent for the past five years while the City was balancing costs of personnel, operations and maintenance. As capital equipment depreciated or is exhausted it must be replaced.

(3) Other sources of funds

The City began 1996 with a surplus of \$17,366. Reducing surpluses could negatively affect the City's credit rating. Nor can the City increase the income tax as the voters rejected efforts to increase the rate from 1% to 1 1/2% in May and in November 1994. To retain its favorable bond rating the City needs reserves for 60-120 days or \$2.2 million, but it has only \$1.7 million.

(4) The Effect on Normal Standard of Public Service

Reducing the capital fund will create difficulties in deciding which of the much needed projects will take priority, and diverting these funds to personal services will prevent long range replacement planning.

The City submitted a chart contending the Union's proposal would cost the City \$2,069,608.23 over three years, and would destroy the general fund budget, impacting on the City's ability to meet normal standards of service.

(5) {Local Ordinance Section 161: Budget Limitations

{The City passed an Ordinance adoption Section 161.03 to take effect in 1997 requiring an annual budget for the City's General Fund under which projected disbursements and cash and capital reserves are to be balanced against projected receipts from City

income tax and other general municipal revenue. At the hearing, the City focused on and asserted that its "Home Rule" powers were not subordinate to ORC 4117 (SERB).

{While Section 161.03 may otherwise be valid, Rocky River v State Employment Relations Board (1989), 43 OS 3d 1, 539 NE 2d 103, 131BNA LRRM 2952 holds that ORC 4117 [and ORC 4117(I)] is controlling. The City now agrees}.

EXHIBITS

City X-3 projects a Five Year Capital Plan dated 11/15/95. The Union criticizes the 1997 plan to spend \$400,000. to enhance training for Paramedics asserting the City has no Paramedic department.

City X-4 is the General Fund Police Department Budget for 1995 and 1996. The affidavit of Cadillac Gard, Manager of the Accounting Division of the city finance department, describes and attaches the 1995 and 1996 budgets with and without forwarding encumbrances. This shows the 1996 without encumbrances to be \$2,527,877. and with encumbrances \$2,880,756. The Union contends this affidavit underscores the Union's contention that inability to pay [require] actual revenues and actual expenditures.

UX 5 is a memo from the Mayor directing all managers to figure a 3% increase and a 1% performance bonus, however the Mayor's post hearing affidavit asserts it was verbally rescinded for 1996. He further asserts the 1996 budget does not permit raises for managers

UX 10 compares wage increases 17 of 21 jurisdictions in north central Ohio. Those granted for 1996 ranged from 2% to 5%. North central includes the counties of Ottawa, Sandusky, Wyandot, Crawford, Huron, Erie, Lorain, Medina, Richland, Ashland and Wayne.

UX 11 compares police wages in 12 cities (three of which include Wayne County; several are outside the north central region) ranging in population from 6147 to 31007 concluding an average by which Wooster's top Patrolmen wages at \$33,758 is 95.44% of the average of the comparables submitted. When UX-7 is studies relating to Patrolmen with 10 years seniority, this percentage drops to 93.68%. Wooster is at 78.85% of the others on rank differential between Sergeants and Patrolmen and 68.26% between Sergeant's and Lieutenants.

Comparables compiled by the City reflect an average entry wage for Patrolmen of \$26,609.26 and \$11.03 per hour, and a top wage average of \$31,700.70 and \$13.70 per hour; Comparisons were reviewed reflecting average annual and average hourly wages for Police officers, Sergeants and Lieutenants. The City's exhibits suggest that police officers in Wooster receive \$16.23 per hour compared to Wayne County average straight time of \$10.90 per hour.

It should be noted that Beechwood, Brecksville and Solon in Cuyahoga County are less comparable than municipal governments in the north central region.

ISSUES IN DISPUTE AND RECOMMENDATIONS

ARTICLE II COMPENSATION, Section 1

UNION

The City Pre-Hearing statement indicates that its understanding of arrival at the hearing was that the Union was seeking a compensation schedule of 0%-8%-4% or 12% over three years. The Union, in fact, seeks 4.5%; 4.5%; 4.5% or 13.5%. The Union asserts that the City has the ability to pay.

CITY

The City proposes compensation adjustments of 0%-2%-02% over three years. It asks that there be no increases in 1996 as managers went without an increase in 1995 and will do so in 1996. The Wooster Employees Association [W.E.A.] and the Wooster Firefighters [I.A.F.F.] ratified no increase in 1996 subject to the "me-too" provision. The firefighters have wage reopeners in 1997 and in 1998. Historic bargaining over the past 5 years resulted in annual police wage increases of 7%, 7.5%, 3%, 4% and 3% [City X-2].

DISCUSSION

The City's post hearing letter summarizes that the Union's request will cost \$177,000 and, because of "me-too" clauses with the W.E.A. and the I.A.F.F., \$1 million city-wide. It is somewhat skewed to require the Fact Finder to decide a matter that will impact on the entire City payroll based on evidence and arguments solely relevant to police compensation, terms and conditions of employment. There is no evidence supporting or rejecting positions of the firefighters and/or the W.E.A.

This case comes down to whether or not the City's is justified in delaying and/or limiting increases that would enable its personnel

to keep up with inflation and to keep reasonable parity with wage paid to police in neighboring communities. The City did not really contest the comparability of the adjacent and neighboring north central region. I have discounted Talmadge and Brunswick which are at the top of the scale, Orville and Rittman which have a third of Wooster's population, and Beachwood, Brecksville and Solon which are in more urbanized Cuyahoga County. The remaining evidence shows that the Wooster police are paid at the average or a little less than average. An increase to keep up with average or a little better than average is supported by the evidence.

The City's position is that because income tax levies were rejected twice and the City suffered financial distress, the employees should wait for increases which should be a modest 4% over three years. A significant influence regarding its needs is the City's plan to structure a capital replacement program [City X-3].

While I agree that a high bond rating keeps city costs lower, and cash and capital reserves are important to prudent management, the Five Year Capital Plan has an unusual impact in relation to the City's total annual budget for Fact Finding purposes.

The Plan calls for expenditures which will "replace/new/enhance" as follows:

1996	\$1,675,260
1997	4,445,350
1998	2,316,500
1999	3,702,500
2000	4,318,150

Considering the total annual 1996 General Fund budget is 13,144,205, the Plan does not do what the City says it should do, i.e.: "balance costs of personnel, operations and maintenance."

The Plan provides for approximately \$16.5 million over five years compared to some \$66+ million over five years [5 times \$13.2 million] in the General Fund budget [using present rates]. The source of this money is apparently allocated by Council from the General Fund to the Capital Fund. Reserving funds for capital needs, if excessive, can preclude funding for personnel expenditures. The relationship of these figures is that the Five Year Capital Plan budgets an amount that is approximately 26% of the size of the General Fund budget.

It is also noted that there was no rebuttal evidence to the Union assertion that there is no Paramedic Department upon which to spend \$400,000 budgeted within the Plan for 1997 so as to enhance Paramedic Training. More important, there was no evidence that such training is a "capital" expenditure under accepted principles of public finance.

The current request to delay increases somewhat to permit the City to stabilize its financial condition is accepted, but the proposal of 4% over three years is inadequate according to the evidence. The police are entitled to an increase of at least nine (9%) percent over three (3) years is fully supported by the evidence based primarily on inflation.

RECOMMENDATION

Compensation shall be increased nine (9) percent over three years if the parties cannot agree as to how much each year, I recommend: zero (0%) percent effective 1/1/96, four and one half (4.5%) percent effective 1/1/97, and five (5%) percent effective 1/1/98. In this scenario, I recommend:

no increase in 1996, solely to avoid the impact of the "me too" clauses in the I.A.F.F and W.E.A. contracts;

reliance on the City's express representation that there will be no increases or stipends or bonuses whatsoever in managers' compensation for 1996;

the nine (9%) percent be increased an additional half percent in the third year as inflation may very well increase by that time.

Section 2

SALARY REDUCTION or DEFERRED METHOD OF COMPUTING EMPLOYEE CONTRIBUTION TO PFP

UNION

In line with increases granted other police departments, the Union proposes a salary reduction method of computing wages on approval of the Internal Revenue Service. There is a user application fee of \$2,100 which the Union expects the City to pay.

CITY

No objection to language. Opposes payment of a entire user fee, but will agree to pay half as was accomplished with the firefighters three years ago.

RECOMMENDATION

Approve the Union proposal, including the provision that the cost of the user fee of \$2,100 assuming this is a one time cost, it is relatively small and should be paid by the City.

ARTICLE XIV, Section 6
OVERTIME PAY & COURT TIME

UNION

Increase compensation time from 40 hours maximum to 100 hours maximum. In addition, the Union proposes adding language allowing employees the option of "cashing out" their compensatory time twice a year.

Providing flexibility in financial planning to the membership would benefit the City which would save 19.5% for the Police Pension Fund.

CITY

Retain current language as is the case with the WEA and the IAFF. The proposal would double the budget for comp time.

DISCUSSION

The Union's position may be mutually desirable but should be gained through the give and take of negotiation, but the burden of proof has not been met for fact finding purposes.

RECOMMENDATION

No change from the language in the current agreement.

ARTICLE XV
ACTING PAY

UNION

Proposes that pay for acting Executive Officer. Acting shift commander to be at time and one-half for any increment of time worked instead of 8 hour minimum.

CITY

Retain current language as no other bargaining unit receives acting pay. The proposal would add \$12.17/hr and be a windfall.

DISCUSSION

Serving in the capacity of Shift Commander entails additional responsibility, however, initiating extra pay for any increment of time rendering this service is unreasonable and can be abused. On the other hand, precluding extra pay unless there is at least

eight hours pay is unreasonable. There is no windfall here. Nor should this be interpreted to mean the recommendation here should apply to firemen or the WEA.

RECOMMENDATION

Extra pay be paid for any service for more than four (4) during any shift, but not time and one-half. A twenty (20%) percent hourly wage increase during such periods would recognize the extra responsibility, reduce potential abuses, without being overly intrusive to the scheduling process. A reopener for good faith discussions on this issue should be scheduled at a time certain in 1997.

ARTICLES XVI & XVII HOLIDAYS

UNION

Add an additional day off the day after Thanksgiving. Add one additional personal day, This is justified in light of time off granted other police departments and to other employees of the City.

CITY

Retain current language. Currently, OPBA has nine holidays and one personal day, which equivalent to WEA's ten holidays and no personal days, and the firefighters six holidays and four personal days.

DISCUSSION

Consistency as to holidays among all city employees is more important to the finance and administration than increasing holidays to match comparable cities.

RECOMMENDATION

No change from the current agreement.

SICK LEAVE ARTICLES XVIII & XIX, Section 3

UNION

Add "parents" to employee's immediate family for use of sick leave, because of occurrences during the past.

CITY

Retain current language. There is no history to support this proposal and no other bargaining unit has the proposed language. In any event, the Family Medical Leave Act is a permitted alternative.

FINDING AND RECOMMENDATION

If an employee chooses to use sick time because of a parent, the City should be able to administer the necessary rescheduling.

Approve Union proposal.

**SICK LEAVE
ARTICLES XVIII & XIX, Section 8**

UNION

Increase severance pay upon retirement to be 50% of accumulated sick time up to 1000 hours. This is designed to reward long term employees for wisely managing their sick leave.

CITY

Retain current language

FINDING AND RECOMMENDATION

There is not support for this proposal which may become too costly. Retain current language.

**INSURANCE
ARTICLE XXI, Section 4**

UNION

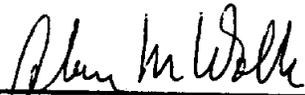
Increase dental/optical allowance from \$300/year to \$600/year. Present coverage is inadequate and the request is reasonable and justified.

CITY

Retain existing amount; add new language permitting unused balance to carryover six (6) months into new contract year.

FINDING AND RECOMMENDATION

Approve City proposal: The same plan as agreed to by the W.E.A. should be adopted here i.e. allowance of \$350.00 dental/optical per person per year, carryover unused allowance for six months into the next year, with the cost of this benefit traded against Life Insurance benefits.



ALAN M. WOLK
Fact Finder

Effective the 1st day of April, 1996.